IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 31ST MAY 2005 / 10TH JYAISHTA 1927

Crl.Rev.Pet.No. 868 of 1996()

AGAINST THE ORDER DATED 28/06/1996 IN CMP 4618/96 IN CC.160/1988 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM

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REVN. PETITIONER:

P.R. SUNDARAM
MANAGING DIRECTOR,
BOMBAY OKARA CARGO MOVERS (P) LTD.,
9 KARIMJI BUILDING,
19 BHANDARI STREET,
BOMAY -400 003,
MAHARASHTRA STATE.

BY ADV. SRI.A.K.SRINIVASAN
SRI.A.S.BENOY

RESPONDENTS:

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1. MR. P.C.CHERIAN,
ACCOUNTS OFFICER,
PADINJAREKARA ATENCEIS LTD.,
KOTTAYAM.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.K.C.PETER
R2 BY PUBLIC PROSECUTOR SRI. THAVAMANI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/05/2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.R.P. 868 of 1996

Dated this the 31st day of May, 2005

ORDER

Petitioner is the 3rd accused in C.C.No.160/1988 on the file of Chief Judicial Magistrate Court, Kottayam. On a complaint filed by the first respondent, the court took cognizance of the offence under Section 403, 407, 420 and 34 of the Indian Penal Code (IPC, for short) against the petitioner and two other accused. Accused 1 and 2 were absconding and hence, case against the petitioner was split up and proceeded with.

2. The complainant was examined as PW1 before the court below and after his examination, the petitioner filed Annexure-C petition as C.M.P.No.4618 of 1996 to discharge the petitioner under Section 245(2) Cr.P.C. The lower court dismissed the application on the ground that there is no merit in the application in view of the order pronounced in C.C.No.160 of 1988 dated 28.6.96. The said order is under challenge in this revision.

3. Learned counsel appearing for petitioner vehemently contended that no offences alleged against petitioner are made out

from the averments in the complaint itself. When PW1 was examined, it became more evident that petitioner cannot be proceeded against for any of the offences alleged against him. As per the allegations in the complaint, 3rd accused is the Managing Director of a company carrying on business of public carriers and transporting cargo to different cities through out India. The complainant alleges that in compliance of order dated 30.12.1987, the complainant entrusted 45 barrels of centrifuged rubber latex with the 3rd respondent at Kottayam on 5.1.1988 for despatching the same to the first accused at Calcutta. The 3rd accused, in violation of the terms of the agreement regarding disposal of the property, which was entrusted with him and in utter disregard of the directions given by the complainant, allegedly handed over the goods to first accused, without getting the original consignment notes and invoices duly discharged, as agreed upon by the complainant and the 3rd accused. The goods entrusted by the complainant with the 3rd accused were thus converted by the first and third accused for their own use. These are the allegations in the complaint in short.

4. While examined as PW1, complainant stated that 3rd accused is the Managing Director of the Company having its Head

office at Bombay. He said that he can identify 3rd accused only if he is seen and that he had gone to his office also. It is further stated that on 5.1.1988, the goods were taken delivery of in the lorry of 3rd accused, but it is specifically stated in the chief examination itself that third accused had not come. He was not present but his people were present. The Manager of third accused company at Kochi had come. He had also stated that the company of third accused delivered the goods to 1st accused as per his knowledge.

5. On going through the complaint and the sworn statement, I find that there is absolutely nothing on record to presume that the petitioner had done anything personally, in respect of the delivery of goods and the transactions alleged in the complaint. Nothing is stated in the complaint or in the evidence of PW1 to the effect that he had personal knowledge of the transactions. He is the Managing Director of the company at Bombay, but as per the evidence and the complaint the transactions took place at Kottayam and Kochi. But, nothing is brought out by adducing evidence or producing documents to show that any involvement of the petitioner in the transaction alleged in the complaint.

6. Unless the petitioner is personally, involved no offence under Section 403, 407 and 470 IPC will lie against the

petitioner. There is nothing to show that the transaction took place with the connivance or consent of the petitioner. No ingredients of Section 420 are made out in the complaint and there is nothing to presume an offence under Section 420 IPC against the petitioner on the basis of the allegations in the complaint or in the evidence of PW1. It appears that the complainant's case is that that the petitioner company is responsible for the loss sustained by him. If the company has committed an offence, the Managing Director cannot be made an accused, since it is established that at the time of commission of the offence such Managing Director had nothing to do with the offence or the transactions. It is also pertinent to note that no such averments are made either in the complaint or in the evidence to connect the petitioner with any of the crime.

7. The court below has failed to consider these aspects and mechanically presumed that a case is made out against the petitioner under Sections 403, 407 and 420 IPC. I am satisfied that this is a fit case for discharging the accused, since nothing is made out from records to presume that any of the offences are alleged against him are committed by him. No criminal liability can be fastened on the petitioner on the strength of the allegations made in the complaint or

in the evidence. [Vide decisions reported in **Delhi Municipality v. Ram Kishan** (AIR 1983 SC 67), R. **Banerjee v. H.D.Dubey** (AIR 1992 SC 1168), **Moola v. Financial Commr., Revenue, Chandigarh** (AIR 1981 SC 1646) **Monaben Ketanbhai Shah v. State of Gujarat** (2005(1) KLJ (NOC) (SC)1)].

In the above circumstances, the order under challenge is set aside. I do not find any material to proceed against the petitioner. The petitioner is liable to be discharged of the offences alleged against him under Sections 403, 407 and 420 IPC and an order is passed accordingly.

Petition is allowed.

K. HEMA, JUDGE.

krs

K. HEMA, J.

Crl.R.P.868 of 1996

ORDER

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